

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

KING E. GREEN, JR.,

Plaintiff,

v.

LINDA M. METRISH, *et al.*,

Defendants.

Case No. 2:04-CV-216

Hon. Richard Alan Enslen

ORDER

Plaintiff King E. Green, Jr. has appealed United States Magistrate Judge Timothy P. Greeley's Order of January 4, 2006, denying Plaintiff's Motion to Compel. The Court reviews the Order under 28 U.S.C. § 636(b)(1)(A) to determine whether it is clearly erroneous or contrary to law.

Upon such review, the Court cannot determine whether the Order is contrary to law on the existing record. It is not clear whether the Magistrate Judge considered the actual copying rate employed as a condition of discovery (25 cents/page), nor is it clear that the Magistrate Judge considered that the charge was assessed at more than double the 10 cents per page rate mandated by policy for legal materials copying for Michigan Department of Corrections ("MDOC") prisoners.¹ See MDOC. P.D. 05.03.115(GG) (eff. 12/19/03); *see also Smith v. Yarrow*, 78 Fed. Appx. 529, 544 (6th Cir. Oct. 20, 2003) (citing *Giles*); *Giles v. Tate*, 907 F. Supp. 1135, 1138 (S.D. Ohio 1995) (mandating lower 10 cents per page rate). As such, the Court will remand for further consideration.

¹The lower MDOC rate was established for the purpose of compliance with *Bounds v. Smith*, 430 U.S. 817, 823 (1977) and other similar cases promoting prisoners' First Amendment rights of access to the courts. Another way to frame this question is whether the party's copying rate (10 cents) or the attorney's copying rate (25 cents) should govern discovery from a party under Federal Rule of Civil Procedure 34.

THEREFORE, IT IS HEREBY ORDERED that Plaintiff King E. Green, Jr.'s Objection (Dkt. No. 103) is **GRANTED** to the extent that the Order of January 4, 2006 is **VACATED** and this matter is remanded to the assigned Magistrate Judge for further consideration.

DATED in Kalamazoo, MI:
February 6, 2006

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE